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SENATE BILL 598

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO PROFESSIONAL LICENSURE; BROADENING THE SCOPE OF THE BOARD OF NURSING HOME ADMINISTRATORS TO LONG-TERM CARE; CHANGING THE NAME OF THE BOARD; TRANSFERRING PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-13-1 NMSA 1978 (being Laws 1970, Chapter 61, Section 1) is amended to read:

"61-13-1. SHORT TITLE. -- ~~[This act]~~ Chapter 61, Article 13 NMSA 1978 may be cited as the "~~[Nursing Home]~~ Long-Term Care Administrators Act". "

Section 2. Section 61-13-2 NMSA 1978 (being Laws 1970, Chapter 61, Section 2, as amended) is amended to read:

"61-13-2. DEFINITIONS. -- As used in the ~~[Nursing Home]~~ Long-Term Care Administrators Act:

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1 A. "adult residential care facility" means a health
2 facility licensed by the department of health pursuant to
3 Section 24-1-5 NMSA 1978 as a shelter care home or a boarding
4 home not under the control of an institution of higher
5 learning;

6 B. "adult residential care facility administrator"
7 means a person who is responsible for planning, organizing,
8 directing and controlling the operation of an adult residential
9 care facility;

10 ~~[A.]~~ C. "board" means the [board of nursing home]
11 long-term care administrators board;

12 D. "long-term care" means care required to be
13 provided under state or federal law in licensed adult
14 residential care facilities or nursing homes;

15 E. "long-term care administrator" means a person
16 licensed by the state as an adult residential care facility
17 administrator or a nursing home administrator;

18 F. "long-term care facility" means an adult
19 residential care facility or a nursing home;

20 ~~[B.]~~ G. "nursing home administrator" means [any
21 individual] a person who is responsible for planning,
22 organizing, directing and controlling the operation of a
23 nursing home or who shares such functions with one or more
24 persons in operating a nursing home;

25 ~~[C.]~~ H. "nursing home" means [any] a nursing

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1 institution or facility required to be licensed under state law
2 as a nursing facility by the public health division of the
3 department of health [~~whether proprietary or nonprofit,~~
4 ~~including skilled nursing home facilities, and whether a~~
5 ~~separate entity or a part of a medical institutional facility~~];
6 and

7 ~~[D.]~~ I. "practice of [~~nursing home~~] long-term care
8 administration" means the planning, organizing, directing and
9 control of the operation of a [~~nursing home~~] long-term care
10 facility. "

11 Section 3. Section 61-13-3 NMSA 1978 (being Laws 1974,
12 Chapter 78, Section 35) is amended to read:

13 "61-13-3. CRIMINAL OFFENDER'S CHARACTER EVALUATION. -- The
14 provisions of the Criminal Offender Employment Act shall govern
15 any consideration of criminal records required or permitted by
16 the [~~Nursing Home Administration~~] Long-Term Care Administrators
17 Act. "

18 Section 4. Section 61-13-4 NMSA 1978 (being Laws 1970,
19 Chapter 61, Section 3, as amended) is amended to read:

20 "61-13-4. [~~BOARD OF NURSING HOME~~] LONG-TERM CARE
21 ADMINISTRATORS BOARD. --

22 A. [~~There is created the "board of nursing home~~]
23 The "long-term care administrators board" is created,
24 consisting of [~~seven~~] eleven members appointed by the governor
25 to three-year terms staggered so that no more than [~~three~~] four

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1 terms expire in any one year. Three members of the board shall
2 be nursing home administrators licensed and practicing under
3 the [~~Nursing Home~~] Long-Term Care Administrators Act for a
4 minimum of five years and who have never been disciplined by
5 the board; one member shall be an adult residential care
6 facility administrator of an adult residential care facility
7 with a capacity of more than fifteen beds and one member shall
8 be an adult residential care facility administrator of an adult
9 residential care facility with a capacity of fifteen or fewer
10 beds, neither of whom have ever been disciplined by the board;
11 one member shall be a practicing physician licensed in this
12 state; and [~~three~~] five members shall be from the public who
13 have no significant financial interest, direct or indirect, in
14 the nursing home or long-term care industry. Members appointed
15 pursuant to this 2003 act shall be appointed to staggered terms
16 of no more than three years.

17 B. Within ninety days of a vacancy, the governor
18 shall appoint a person to fill the unexpired portion of the
19 term. Board members shall be citizens of the United States and
20 residents of the state, and not more than one member shall be
21 an employee of any state or other public agency.

22 C. On July 1, 2003, members of the board of nursing
23 home administrators are appointed to the long-term care
24 administrators board for terms equal to the time remaining on
25 their appointments under the Nursing Home Administrators Act."

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1 Section 5. Section 61-13-6 NMSA 1978 (being Laws 1970,
2 Chapter 61, Section 5, as amended) is amended to read:

3 "61-13-6. DUTIES OF THE BOARD. -- [~~It is the duty of~~] The
4 board [~~to~~] shall:

5 A. formulate, adopt and regularly revise such rules
6 [~~and regulations~~] not inconsistent with law as may be necessary
7 to adopt and enforce standards for licensing [~~nursing-home~~]
8 long-term care administrators and to carry into effect the
9 provisions of the [~~Nursing Home~~] Long-Term Care Administrators
10 Act;

11 B. approve for licensure applicants for:

12 (1) initial licensure;

13 (2) annual renewal of current, active

14 licenses;

15 (3) reciprocity;

16 (4) reinstatement of revoked or suspended

17 licenses; and

18 (5) reactivation of inactive or expired

19 licenses;

20 C. cause the prosecution or enjoinder of all
21 persons violating the [~~Nursing Home~~] Long-Term Care
22 Administrators Act and deny, suspend or revoke licenses in
23 accordance with the provisions of the Uniform Licensing Act;

24 D. submit a written annual report to the governor
25 and the legislature detailing the actions of the board and

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1 including an accounting of all money received and expended by
2 the board;

3 E. employ such administrative personnel as may be
4 necessary for the efficient operation of the [~~Nursing Home~~]
5 Long-Term Care Administrators Act; and

6 F. maintain a register of licensees and a record of
7 all applicants for licensure received by the board. "

8 Section 6. Section 61-13-8 NMSA 1978 (being Laws 1970,
9 Chapter 61, Section 7, as amended) is amended to read:

10 "61-13-8. LICENSURE OF [~~NURSING HOME~~] LONG-TERM CARE
11 ADMINISTRATORS. --

12 A. The board shall issue a license as a nursing
13 home administrator to [~~each~~] an applicant who files an
14 application in the form and manner prescribed by the board,
15 accompanied by the required fee, and who furnishes evidence,
16 including a criminal records check, satisfactory to the board
17 that he:

18 [~~A.~~] (1) is of good moral character;

19 [~~B.~~] (2) has successfully completed a course
20 of study for a baccalaureate degree and has been awarded [~~such~~]
21 that degree from an accredited institution in a course of study
22 approved by the board as being adequate preparation for nursing
23 home administrators;

24 [~~C.~~] (3) demonstrates professional competence
25 by passing an examination in nursing home administration as

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1 prepared and published by the professional examination service
2 or such other nationally recognized examination as the board
3 [~~shall prescribe~~] prescribes in its rules [~~and regulations~~];

4 [~~D.~~] (4) demonstrates knowledge of state
5 [~~regulations~~] rules governing the operation of nursing homes in
6 a manner [~~as~~] prescribed by the board [~~shall prescribe~~] in its
7 rules [~~and regulations~~]; and

8 [~~E.~~] (5) has successfully completed an
9 internship or administrator-in-training program as prescribed
10 by the board in its rules [~~and regulations~~].

11 B. After July 1, 2003, the board shall issue a
12 license as an adult residential care facility administrator to
13 an applicant who files an application in the form and manner
14 prescribed by the board, accompanied by the required fee, and
15 who furnishes evidence, including a criminal records check,
16 satisfactory to the board that he demonstrates professional
17 competence in and knowledge of the operation of adult
18 residential care facilities, including a thorough understanding
19 of the department of health requirements for adult residential
20 care facilities, as prescribed by rules of the board.

21 C. Until June 30, 2003 the board shall issue a
22 temporary license as an adult residential care facility
23 administrator to an applicant who demonstrates that he is
24 employed as an adult residential care facility administrator
25 and who pays the required fee set by rule of the board.

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1 D. The board may adopt and implement rules to
2 permit issuance of a license as an adult residential care
3 facility administrator to a licensed nursing home administrator
4 who has not been disciplined by the board and who makes
5 application and pays the required fee for such a license."

6 Section 7. Section 61-13-10 NMSA 1978 (being Laws 1970,
7 Chapter 61, Section 9, as amended) is amended to read:

8 "61-13-10. LICENSURE BY EXAMINATIONS BY BOARD. --

9 A. Upon investigation of the application and other
10 evidence submitted, the board shall, not less than thirty days
11 prior to any scheduled examination, notify ~~[each]~~ an applicant
12 that the application and evidence submitted is satisfactory or
13 unsatisfactory and rejected. If rejected, the notice shall
14 state the reasons for rejection.

15 B. Examinations shall be held at least twice each
16 year at such a time and place as the board may determine and at
17 other times as, in the opinion of the board, the number of
18 applicants for licensure warrants.

19 C. The board shall administer the national
20 standards examination for nursing home administrators in a
21 manner specified by the national examination service with which
22 it contracts.

23 D. The board shall adopt and implement an
24 examination for licensure as an adult residential care facility
25 administrator."

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1 Section 8. Section 61-13-11 NMSA 1978 (being Laws 1970,
2 Chapter 61, Section 10, as amended) is amended to read:

3 "61-13-11. LICENSURE WITHOUT EXAMINATION. -- The board
4 shall issue a nursing home administrator's or adult residential
5 care facility administrator's license, temporary or regular,
6 without examination, to any person who holds a nursing home
7 administrator's or an adult residential care facility
8 administrator's license current and in good standing in another
9 jurisdiction [~~provided that~~] if the board finds that the
10 standards of licensure in the other jurisdiction are at least
11 the substantial equivalent of those prevailing in this state
12 and that the applicant meets the qualifications of the [~~Nursing~~
13 ~~Home~~] Long-Term Care Administrators Act. "

14 Section 9. Section 61-13-12 NMSA 1978 (being Laws 1970,
15 Chapter 61, Section 11, as amended) is amended to read:

16 "61-13-12. LICENSE AND RENEWAL FEES-- BOARD
17 EXPENDITURES. --

18 A. The board shall require by [~~appropriate~~] rule
19 [~~or regulation~~] that applicants for licensure [~~as nursing home~~
20 ~~administrators~~] pay a license fee in an amount set by the board
21 not to exceed two hundred fifty dollars (\$250) and an annual
22 renewal fee in an amount set by the board not to exceed two
23 hundred dollars (\$200).

24 B. The board shall deposit all fees received by the
25 board in a special fund maintained by the state treasurer for

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1 use in defraying the expenses of administration of the [~~Nursing~~
2 ~~Home~~] Long-Term Care Administrators Act. All unexpended
3 [~~balancee~~] balances remaining in the fund at the end of each
4 fiscal year shall remain to the credit of the [~~board~~] fund.

5 C. The board may obtain and administer programs of
6 grants-in-aid or financial assistance from any governmental
7 agency or private source in the furtherance of programs
8 consistent with the [~~Nursing Home~~] Long-Term Care
9 Administrators Act. "

10 Section 10. Section 61-13-13 NMSA 1978 (being Laws 1970,
11 Chapter 61, Section 12, as amended) is amended to read:

12 "61-13-13. REFUSAL, SUSPENSION OR REVOCATION OF
13 LICENSE. --The board may refuse to issue or renew or may suspend
14 or revoke any license in accordance with the procedures
15 contained in the Uniform Licensing Act on the grounds that the
16 licensee or applicant:

17 A. is guilty of fraud or deceit in procuring or
18 attempting to procure or renew a license to practice as a
19 [~~nursing home~~] long-term care administrator;

20 B. is convicted of a felony;

21 C. is guilty of gross incompetence;

22 D. is habitually intemperate or is addicted to the
23 use of habit-forming drugs or is addicted to any vice to such a
24 degree as to render him unfit to practice as a [~~nursing home~~]
25 long-term care administrator;

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1 E. is guilty of failing to comply with any of the
2 provisions of the [~~Nursing Home~~] Long-Term Care Administrators
3 Act or any rules or regulations of the board adopted and filed
4 in accordance with the State Rules Act;

5 F. has been declared mentally incompetent by
6 regularly constituted authorities; provided that the revocation
7 shall only be in effect during the period of such incompetency;
8 or

9 G. is guilty of conduct that substantially deviates
10 from reasonable standards of acceptable practice of [~~nursing~~
11 ~~home~~] long-term care administration, including [~~but not limited~~
12 ~~to~~] the following:

13 (1) he has been convicted of a misdemeanor
14 substantially relating to the practice of [~~nursing-home~~] long-
15 term care administration;

16 (2) he has been found by a court of law, the
17 board, an agency responsible for the certification and
18 licensure of [~~nursing-homes~~] long-term care facilities, a state
19 medicaid fraud and abuse unit or any other duly recognized
20 state agency to be responsible for the neglect or abuse of
21 [~~nursing-home~~] long-term care facility residents or the
22 misappropriation of their personal funds or property;

23 (3) he has been found by a state [~~nursing~~
24 ~~home~~] long-term care licensing board, an agency responsible for
25 the certification and licensure of [~~nursing-homes~~] long-term

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1 care facilities or any other duly recognized state agency [as]
2 to be responsible for substandard care in a [~~nursing home~~]
3 long-term care facility;

4 (4) he has been found to have falsified
5 records related to the residents or employees of a [~~nursing~~
6 ~~home~~] long-term care facility on the basis of race, religion,
7 color, national origin, sex, age or handicap in violation of
8 federal or state laws; or

9 (5) he has had a license revoked, suspended or
10 denied by another state for any of the reasons contained
11 in this section. "

12 Section 11. Section 61-13-14 NMSA 1978 (being Laws 1970,
13 Chapter 61, Section 13) is amended to read:

14 "61-13-14. PENALTIES.--It shall be a misdemeanor for any
15 person to:

16 A. sell or fraudulently obtain or furnish any
17 license or aid or abet in the obtaining or furnishing of any
18 license under the [~~Nursing Home~~] Long-Term Care Administrators
19 Act;

20 B. practice as a [~~nursing home~~] long-term care
21 administrator, under cover of any license or registration
22 illegally or fraudulently obtained or unlawfully issued;

23 C. practice as a [~~nursing home~~] long-term care
24 administrator or use in connection with his name any
25 designation tending to imply that he is a [~~nursing home~~]

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1 long-term care administrator unless duly licensed and
2 registered to [~~so~~] practice under the provisions of the
3 [~~Nursing Home~~] Long-Term Care Administrators Act; or

4 D. practice as a [~~nursing-home~~] long-term care
5 administrator without a valid license or during the time his
6 license or registration issued under the provisions of the
7 [~~Nursing Home~~] Long-Term Care Administrators Act is suspended
8 or revoked. "

9 Section 12. Section 61-13-15 NMSA 1978 (being Laws 1970,
10 Chapter 61, Section 14) is amended to read:

11 "61-13-15. INJUNCTIVE PROCEEDINGS. --

12 A. The board may, in the name of the state [~~of New~~
13 ~~Mexico~~] and through the attorney general, apply for an
14 injunction in any court of competent jurisdiction to enjoin any
15 person from committing any act declared to be a misdemeanor by
16 the [~~Nursing Home~~] Long-Term Care Administrators Act.

17 B. If it [~~be~~] is established that the defendant has
18 been or is committing an act declared to be a misdemeanor by
19 the [~~Nursing Home~~] Long-Term Care Administrators Act, the court
20 shall enter a decree perpetually enjoining [~~said~~] the defendant
21 from further committing [~~such~~] the act.

22 C. [~~Such~~] Injunctive proceedings shall be in
23 addition to and not in lieu of all penalties and other remedies
24 in the [~~Nursing Home~~] Long-Term Care Administrators Act. "

25 Section 13. Section 61-13-17 NMSA 1978 (being Laws 1978,

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1 Chapter 206, Section 1, as amended) is amended to read:

2 "61-13-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL. --

3 The [~~board of nursing home~~] long-term care administrators
4 board is terminated on July 1, 2005 pursuant to the Sunset Act.
5 The board shall continue to operate according to the provisions
6 of Chapter 61, Article 13 NMSA 1978 until July 1, 2006.
7 Effective July 1, 2006, Chapter 61, Article 13 NMSA 1978 is
8 repealed. "

9 Section 14. TEMPORARY PROVISION--TRANSFER. -- On the
10 effective date of this act:

11 A. all functions, personnel, appropriations, money,
12 files, records, furniture, equipment, supplies and other
13 property of the board of nursing home administrators shall be
14 transferred to the long-term care administrators board;

15 B. contractual obligations of the board of nursing
16 home administrators shall be obligations of the long-term care
17 administrators board; and

18 C. statutory references to the board of nursing
19 home administrators shall be deemed to be references to the
20 long-term care administrators board.

21 Section 15. REPEAL. --Section 61-13-16 NMSA 1978 (being
22 Laws 1970, Chapter 61, Section 15) is repealed.

23 Section 16. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2003.